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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,136

01/20/2004

Brian L. Bettencourt

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11/07/2005

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EXAMINER

MATTHEWS, TERRELL HOWARD

ART UNIT

PAPER NUMBER

3654

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/759,136

Applicant(s)

BETTENCOURT, BRIAN L.

Examiner

Terrell H. Matthews

Art Unit

3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Final Rejection**

Applicant's arguments filed 8/17/2005 have been fully considered but they are not persuasive for reasons detailed below.

The 35 U.S.C. 112 rejections are maintained or modified as follows:

These rejections have been withdrawn.

The prior art rejections are maintained or modified as follows:

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsumoto. Although Matsumoto's invention sole purpose is not to serve as a "concrete coloring tool" it comprises the same parts and could carry out the same functions recited by claims 1-2 and 6.

Referring to claims 1 and 2. Matsumoto discloses a dirt remover as claimed. See Fig. 1 and respective portions of the specification. Matsumoto discloses a device that includes a handle (1), a frame (4), and a net (5), which is hung from the inner sides of the frame (4). Matsumoto also discloses that the handle (1) is attached to the frame (4)

through a connecting member (15) in col.5 lines 52-53. Consequently, it is understood that the net (5) can be broadly construed as being a "flat, uniform perforated material enclosed inside the frame" as recited in claim 1. Matsumoto discloses as well in his patent that the frame (4) is made from aluminum as described in column 4, lines 38-39.

Referring to claim 6. Matsumoto discloses the invention as described above in which the handle (1) is attached to the frame (4) via a connecting member (15) as discussed in col.5 lines 52-53. Matsumoto further states in col. 5 lines 65-66 that the handle (1) has an internal thread (19) and that the handle is then connected to the frame (4) by admitting the leading end of the connecting member (15) into the opening and turning the handle allowing the internal thread to bite and lock into the connecting member. Therefore, it is explicitly implied that the handle (1) is hollow as recited in claim 6 to accommodate being threaded into the connecting member.

Claims 1,4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchell (5738399).

Referring to claims 1,4-5. Mitchell discloses a "Cat Litter Scoop" as claimed. See Figs 1-8 and respective portions of the specification. Mitchell further discloses that a scoop (1), a base (2), a handle (3) and that the base is formed of a relatively fine mesh material (11) to promote a sifting action. It is understood from Figs. 2 & 2A that the frame is square in shape and includes four walls as well as that the screen is a flat, uniform perforated sheet material (See Col. 2 l. 53-66).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumoto in view of Vosbikian .

In regards to claim 3, Matsumoto discloses the invention as described above. Matsumoto does not disclose a "T-bracket having a mounting plate attached to one of the edges of the frame", a "socket pivotally mounted to the mounting plate", a "handle being mounted in the socket", or a " T-bracket having means for temporarily fixing the socket at an angular inclination" as recited in claim 3. However, Vosbikian discloses an invention as claimed. See Figs. 1-4, 9-11 and respective portions of the specification. Vosbikian discloses an invention inclusive of a bracket (40), a handle (70), a pan-base member (20), and holes (50,58,72). It should be noted that the pan-base member can be broadly construed as a "frame" and that the holes can be broadly construed for serving as a "socket". Vosbikian discloses that the bracket (40) is "rigidly fixed to the base portion (20) and encompasses the end of handle (70)" in col. 7 lines 10-11 and

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that the "bracket and base member are pivotally coupled via the bracket on a pivot axis transverse to the handle" col. 7 lines 15-17. Vosbikian later details that the bracket (40) includes at least two locking means arranged for setting the joint to selected angles in col. 7 lines 51-53. Vosbikian states as well that, "a plurality of locking means can be provided to pivotally fix a handle, relative to the base at any position along the pivot axis", in col. 12 lines 23-26. Therefore, it would have been obvious at the time of the invention to a person of ordinary skill in the art to modify the apparatus of Matsumoto to include a bracket and a socket as a means for temporarily fixing the handle at an angular height as recited in claim 3. This connection of the handle to the frame of Matsumoto's invention would have been obvious to incorporate to allow particles to be removed by users of different heights or for use at different angles.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumoto.

In regards to claim 7 Matsumoto, discloses that invention as described above. Matsumoto does not disclose an "aluminum pole threaded into the handle" as recited in claim 7. However, Matsumoto does describe a device that consists of handle (1) which has an internal thread (19) and by which the handle is then connected to the frame (4) by admitting the leading end of the connecting member (15) into the opening. Matsumoto also teaches that the turning of the handle will allow the internal thread to bite and lock into the connecting member. Therefore, it would have been obvious to a person of ordinary skill in the art to thread an aluminum pole into the handle as taught

by Matsumoto in which he threaded a handle into a connecting member that was attached to the frame. This would have been obvious to do in order to extend the length of the handle for situations in which it was required to reach farther.

### **Response to Arguments**

Applicant's argument that the prior art is drawn to non-analogous art is unpersuasive. It should be noted that the issue of whether a reference is analogous relates to obviousness under 35 USC §103 rather than anticipation under 35 USC § 102. Additionally, it should be noted as was previously discussed that Matsumoto's invention comprises the same parts for structure and could carry out the same function. Applicant's focus on having at least one wall solidly formed that has upper and lower edges, sheet material attached adjacent to the lower edge of each wall, and that has an attached handle extends from the wall is disclosed by both Matsumoto and Mitchell. Additionally, in regards to claim 7 Matsumoto discloses a handle attached to the frame through a connecting member. It would have been obvious to have an aluminum pole serve as the connecting member to the handle, which was attached to the frame for reasons discussed in the claim rejections. Further, the Vosbikian's reference is considered analogous art as it's teaching relates solely to the attachment of a handle to a square frame. Consequently, as a review of the prior art undermines Applicant's arguments, the claims stand rejected.

Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicant's amendment necessitated any new grounds of rejection presented in this Office action. More specifically, applicant's amendments necessitated the inclusion of Mitchell as it applied to claims 1,4, and 5. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set for the in 37 CFR 1.136(a). For the above reasons, it is believed that the rejections should be sustained.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Graham US Patent No. 4988005 discloses a sifting device with a handle attached to the frame, a steel blade, and an enclosed perforated material.

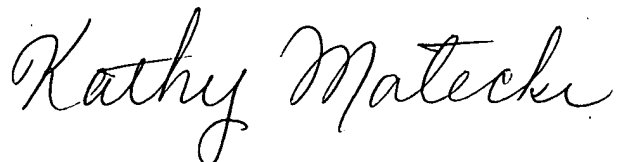
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrell H. Matthews whose telephone number is (571)272-5929. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

THM



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